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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1968

No. 726

FRANK SUTTON, on behalf of himself and others similarly situated,

Appellant,

vs.

TOM ADAMS, as Secretary of State of the State of Florida and EARL FAIRCLOTH, as Attorney General of the State of Florida,

Appellees.

JURISDICTIONAL STATEMENT OF APPELLANT

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The decision of the Supreme Court of Florida sought to be reviewed is reported in 212 So.2d 1. A copy of the opinion appears as Appendix D.

GROUNDS ON WHICH JURISDICTION IS INVOKED

Nature of the Proceeding

Appellant FRANK SUTTON on behalf of himself and others similarly situated seeks review of the decision of the Supreme Court of Florida reversing a decision of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida.

In its Final Decree the Circuit Court had declared unconstitutional Florida Statute 99.161(b), which prohibits political contributions by liquor licensees, except members of country clubs, fraternal, social and cultural organizations. The Supreme Court of Florida reversed the decision in favor of the validity of the Statute, holding that a reasonable relationship exists between the purpose of the Statute and the classes excluded from its prohibitions.

Review is sought pursuant to 28 U.S.C.A. 1257(2), Florida Statute 99.161(b) and the Fourteenth Amendment to the Constitution of the United States.

OPINIONS BELOW

The Final Decree of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, dated October 5, 1967, was entered on October 5, 1967. It is unreported (Appendix C).

The decision of the Supreme Court of Florida sought to be reviewed was entered on June 5, 1968 (Appendix D). Petition for Rehearing (Appendix E) was denied on July 15, 1968 (Appendix F).

Notice of Appeal to the Supreme Court of the United States was filed on October 10, 1968, in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, the Court possessed of the record, and a copy was filed in the Supreme Court of Florida.

Application for extension of time within which to docket this appeal was mailed to the Supreme Court of the United States on October 9, 1968 and resubmitted on October 16, 1968. Order was entered extending the time for docketing to November 12, 1968 (Appendix G).

Statute Conferring Jurisdiction

The statutory provision believed to confer jurisdiction of the appeal on this Court is 28 U.S.C.A. 1257(2) which states:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Jurisdiction is conferred by the Fourteenth Amendment to the Constitution of the United States:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Jurisdiction is also conferred by Rule 10 of the Rules of the Supreme Court of the United States.

Cases Believed to Sustain Jurisdiction

Mayhue v. City of Plantation Florida, 375 F.2d 477

Morey v. Doud, 354 U.S. 457, 465, 77 S.Ct. 1344, 1 L.ed.2d 1485, 1491 (1957)

Smith v. Cahoon, 283 U.S. 533, 51 S.Ct. 582, 75 L.ed 1264 (1930)

Smith v. Ervin, 64 So.2d 166

Spencer v. Bryan, 87 Fla. 56, 99 So. 327

STATUTES INVOLVED

99.161(b) Florida Statutes

"No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation holding such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the state; provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations."

104.27 Florida Statutes

"(1) Any person who knowingly violates the provisions of Section 99.161 shall be deemed guilty of a misdemeanor and subject to a fine of not more than one thousand dollars or to imprisonment for not more than six months.

In addition thereto —

(2) The nomination or election to office of any person who wilfully violates the provisions of Section 99.161, or cause to violate, may be declared void by the court of competent jurisdiction in which event the nomination for office shall be held as in other cases where a vacancy occurs.

(5) Any license for the sale of intoxicating beverages shall be subject to revocation by the state beverage department if any person holding such a license, or any member of an unincorporated association holding such a license, or any officer or director of a corporation which holds such a license, knowingly violates Section 99.161."

Florida Statute 561.15(1)

"Licenses shall be issued only to persons of good moral character, who are not less than twenty-one years of age. Licenses to corporations shall be issued only to corporations whose officers are of good moral character and not less than twenty-one years of age. There shall be no exemptions

Constitution of the State of Florida, Article VI Section 1.

SECTION 1. Electors.—Every person of the age of twenty-one years and upward that shall, at the time of registration, be a citizen of the United States, and that shall have resided and had his habitation, domicile, home and place of permanent abode in Florida for one year and in the county for six months, shall in such county

be deemed a qualified elector at all elections under this constitution. Provided however, the legislature may provide for voting in national elections for president and vice-president of the United States by persons who have become residents of the state of Florida but who have not yet fulfilled the residency requirements of electors.

QUESTION PRESENTED

A STATUTE IS UNCONSTITUTIONAL WHICH PROHIBITS A SPECIFIED GROUP OF CITIZENS FROM ENGAGING IN POLITICAL ACTIVITIES WHEN

(A) THE PROHIBITION IS SO VAGUE AS TO PREVENT ACTIVITIES FAR BEYOND THOSE CONTEMPLATED BY THE STATUTE, AND

(B) THE CLASSIFICATION OF THE GROUP IS NOT REASONABLY RELATED TO THE EVIL SOUGHT TO BE PREVENTED BY THE STATUTE.

STATEMENT OF THE CASE

FRANK SUTTON, on behalf of himself and others similarly situated filed a Complaint (App. A) for declaratory decree and other relief in the Circuit Court of the 11th Judicial Circuit in and for Dade County Florida against TOM ADAMS, as Secretary of State of the State of Florida and EARL FAIRCLOTH, as Attorney General of the State of Florida. The cause was transferred to the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida in Tallahassee.

The Complaint alleged that FRANK SUTTON, a duly qualified, registered voter in Florida, and holder of a liquor license issued by the State of Florida and of a Federal Import Permit, as well as a qualified elector and citizen of the United States, had been prohibited since 1951 by Florida Statute 99.161 from contributing in any manner to any political party or candidate for nomination or election to any political office.

In 1965 the law was amended, excluding from the prohibitions members of country clubs, fraternal, social and cultural organizations. FRANK SUTTON was not within the exclusion and thus was still within the prohibitions of the statute.

The Complaint also stated that Florida Statute 104.27 provided penalties for violation of Florida Statute 99.161 (b), including a fine of not more than $1,000.00 or imprisonment for not more than six (6) months.

The Complaint alleged that Florida Statute 99.161(b) was invalid, unconstitutional and void, and cited among the grounds that Florida Statute 561.15 permits liquor licenses to be issued only to persons of good moral character, and that Florida Statute 567 requires voter approval prior to the sale of alcoholic beverages in a county in Florida.

Plaintiff alleged deprivation of his rights to equal protection of law, discrimination in classification, and deprivations of the rights of free speech and assembly.

In addition, Plaintiff alleged that Florida Statute 99.161(b) as amended, was unconstitutionally vague and ambiguous and constituted an unlawful restriction of Plaintiff's right to vote and to support the candidate of his choice, by limiting his right to vote to the actual casting of his ballot without reasonable basis or classification.

The Complaint prayed that Florida Statute 99.161(b) be held unconstitutional because it was in conflict with the Constitution of the State of Florida, Declaration of Rights, Sections 1, 13 and 15 and Article VI, Section 1 of the Constitution of the State of Florida as well as Amendment XIV of the Constitution of the United States.

Defendants filed Answer denying the allegations of unconstitutionality (App. B).

The Circuit Court of Leon County entered Final Decree (App. C) declaring subsection 1(b) of Florida Statute 99.161, 1965, null, void and inoperative by virtue of the amendment added by the 1965 Legislature.

Defendants appealed directly to the Supreme Court of Florida, challenging the entry of the Final Decree and alleging as error the declaration that subsection 1(b) of 99.161 Florida Statute 1965 was null, void and inoperative since that section was severable. No other ground was argued.

In its Opinion filed June 5, 1968, (App. D) the Supreme Court of Florida reversed the decision of the lower court. The Supreme Court of Florida stated that the exclusions of members of certain organizations of a fraternal nature "simply excludes those organizations from the group licensees covered by the act, and prevents application of its prohibitions against contributions on the basis of affiliation of such licensees."

The Court held the classifications reasonable in light of the purpose of the act which was to prevent all undue influences from improper practice in the conduct of elections, improper practices to be decided by the Legislature.

Petition for Rehearing was filed by Plaintiff (App. E) asserting that the Court failed to consider provisions of the Statute other than exclusion of fraternal organizations, challenged on the basis of free speech, free election of representatives to state and federal government, ambiguity and deprivation of rights. The ambiguity of the phrase "contribution of any nature" was cited by the Petition to include non-monetary support, a vote and vocal support.

Petition for Rehearing was denied (App. F).

Order extending time for completion of docketing to November 12, 1968, was entered by Justice Hugo L. Black on October 22, 1968 (App. G).

The Federal Questions are Substantial

The Supreme Court of Florida in its Opinion and Denial of Petition for Rehearing upheld the validity of Florida Statute 99.161(b). The federal questions are substantial; they involve arbitrary discrimination in the prohibitions on voting contributions by liquor licensees by a State, without reasonable purpose or reasonable classification, repugnant to constitutional rights of equal protection and due process of law.

Appellant challenged Florida Statute 99.161(b) in its entirety. The trial court ruled only on the 1965 amendment pertaining to fraternal organizations, thereby upholding the validity of the remainder of the subsection. The trial court relied on *Smith v. Ervin*, 64 So.2d 166 as upholding the constitutionality of Florida Statute 99.161 prior to 1965. The Supreme Court of Florida had found only that "we hold only that the challenged act of the legislature is constitutional insofar as the attacks which have been made in this court upon it are concerned." Examination of that case disclosed that only subsections 4(a) and 7 were attacked.

Appellant contends due process was violated by arbitrary and unreasonable classification since relationship of the excluded fraternal organizations to the alleged purpose of the statute, which was to prevent improper practices, was not supported by the facts. Liquor licensees are carefully screened under the existing statutes, and there is no basis for holding that members of the fraternal organizations listed are different in any way from the remainder of liquor licensees insofar as improper practices are concerned.

Statutory discriminations must be based on differences that are reasonably related to the purpose of the act. *Morey v. Doud*, 354 U.S. 457, 465, 77 S.Ct. 1344, 1 L.ed.2d 1485, 1491 (1957); *Smith v. Cahoon*, 283 U.S. 533, 51 S.Ct. 582, 75 L.ed. 1264 (1930); *Mayhue v. City of Plantation Florida*, 375 F.2d 447.

The effect of the statute, Sec. 99.161, Florida Statutes, is to impose on some residents and voters of the State of Florida, limitations not placed upon others as to the subject regulated, to-wit: Political contributions.

Since the voters so limited are qualified electors and operators of legitimate businesses, there appears to be no real difference between them and voters who are permitted to make political contributions so as to fairly justify the classification and prohibition, and the statute in effect denies to certain voters of the State of Florida the equal protection of the laws guaranteed by the Federal Constitution. State ex rel. *Spencer v. Bryan*, 87 Fla. 56, 99 So. 327.

The subject matter of the statute is political contributions. The exclusion of the individuals involved in the enumerated businesses or occupations is arbitrary, and has no reasonable relation to the subject being regulated. There is no reasonable basis for distinguishing the electors so limited from any of the remaining electors who are permitted to make contributions. The classification is based merely on occupations or activities, all of which are legal and legitimate, and all of which are indistinguishable from occupations or activities of voters permitted to make political contributions.

That the legislation involved is patently arbitrary and capricious is clear from the fact that individuals who are prohibited from making contributions may themselves be candidates for office.

There is no law prohibiting an individual holding a license for the sale of intoxicating beverages from running for public office in the state. Nor is there any law prohibiting an individual from contributing his own money to his own candidacy. Here, is an obvious and irreconcilable conflict in the law. An individual holding a license for the sale of intoxicating beverages may run for state office

and contribute to his own campaign, yet at the same time the law purports to prohibit him from contributing to *any* candidate for nomination or election to any political office in the state.

Thus, the practical effect of the law is to limit and restrict an individual qualified for public office from attempting to obtain election to same. He is unable to employ his personal funds to advance his candidacy, and he is unable to receive political contributions from individuals similarly situated who may sympathize with his views and platform as a candidate.

In its practical application and effect the law not only prohibits political contributions by the prohibited classes but also destroys or unduly limits their right to qualify as candidates for political office in this state, by placing on them handicaps and restrictions not encountered by candidates who are not members of the prohibited classes.

There is no reason to distinguish between a liquor licensee who is, and a liquor licensee who is not, a member of a private club. Yet, the Florida Statute does make that distinction.

In the Circuit Court of Leon County it was held that the distinction was invalid and not based upon reason.

The vagueness of the language "contribution of any nature" creates additional constitutional infirmity. The phrase "of any nature" would clearly indicate that other assistance besides monetary assistance is prohibited. To illustrate: If one were to purchase time on a radio pro-

gram or television program to support a candidate using prominent citizens to influence the electorate, at least two people would be contributing. The first contributor would be the person who gave the money to purchase the time. The second contributor (not necessarily the same person) would be the person who spoke but did not give the money. The latter person is prohibited from speaking in support of a candidate under the staute if he is a liquor licensee. It is his speech and his appearance that creates the contribution and is forbidden.

In view of the foregoing it would appear that the same prohibition would exist against vocal support of a candidate in a social gathering, a bar, a street corner or in any fashion. Thus, freedom of speech is limited unconstitutionally.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Court has jurisdiction of this appeal.

MILTON E. GRUSMARK
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that two true and correct copies of Jurisdictional Statement of Appellant were mailed to Earl Faircloth, Attorney General and Robert Chastain, Assistant Attorney General, Attorneys for Appellees, The Capitol, Tallahassee, Florida 32304, this ____ day of November, 1968.

MILTON E. GRUSMARK